

Paul G. Karlsgodt (*pro hac vice*)
BAKER & HOSTETLER LLP (CO)
1801 California Street
Denver, CO 80202
Telephone: (303) 764-4032
pkarlsgodt@bakerlaw.com

David M. McMillan (*pro hac vice*)
BAKER & HOSTETLER LLP (NY)
45 Rockefeller Plaza
New York, NY 10111
Telephone: (212) 847-2838
dmcmillan@bakerlaw.com

Patricia W. Christensen (0645)
PARR BROWN GEE & LOVELESS
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Telephone: (801) 257-7908
pchristensen@parrbrown.com

*Attorneys for Defendant Hosting
Services, Inc. a/k/a 100TB.com*

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

XAT.COM LIMITED,

Plaintiff,

v.

HOSTING SERVICES, INC. A/K/A
100TB.COM,

Defendant.

Case No. 1:16-CV-00092 (PMW)

**DEFENDANT'S SHORT FORM
MOTION TO COMPEL ANSWERS TO
INTERROGATORIES AND THE
PRODUCTION OF DOCUMENTS**

Honorable Paul M. Warner

Expedited Treatment Requested

Xat.com is a social networking website where users create chatrooms, purchase virtual currencies called “xats” and communicate through emoticons:



Exhibit A (7/11/2014 post).

Chatrooms are moderated by a rotating cast of “volunteers”—semi-anonymous Xat users tasked with enforcing Xat’s terms of service by punishing users for poor behavior, including suspending or terminating accounts.¹ See Exhibit A (7/11/2014 and 7/12/2014 posts); Exhibit C (12/5/2011 post).

Publicly-available information suggests that beginning around 2010 (if not earlier), Xat suffered multiple cybersecurity attacks at the hands of disgruntled Xat users seeking revenge

¹ <https://util.xat.com/wiki/index.php/Volunteers>, attached as Exhibit B.

against the site and its volunteers for perceived injustices. *See* Exhibits A, C, D. One user—“Zuhnnny”—formed a Twitter group called “Xat Hacks” to broadcast successful exploits of Xat’s systems (some of which were apparently ignored by Xat for years) and personal hacks against Xat staff and volunteers. *See* Exhibit A (e.g., 9/22/2014, 9/24/2014 and 9/25/2014 posts). In 2015, Zuhnnny set his sights on 100TB and is understood to have perpetrated the alleged Cyberattacks² giving rise to this litigation.

Coinciding with this period of cybersecurity lapses and user unrest, Xat’s userbase began sharply declining in 2012 and has continued to decline ever since. To compensate for this failed business, Xat’s owner has evidently decided this lawsuit could earn him the retirement check he desperately needs. Xat claims the Cyberattacks damaged Xat’s “reputation” precipitating a loss of users and “prospective profits” to the tune of several millions of dollars. But when 100TB sought discovery to confirm public knowledge that Xat’s reputation was abysmal for years before the Cyberattacks and that its users fled the site for reasons wholly unrelated to 100TB, Xat refused to produce—or even search for—key categories of documents and information. This flagrant violation of Federal Rules of Civil Procedure has denied 100TB the right to develop its defenses on the key issues of causation and damages.

Specifically, Xat refuses to produce (or search for) the following:

- a) **Communications exchanged by Xat volunteers on Xat’s platform (RFP 17).**³ Xat admits its volunteers communicated in a Xat forum but refuses to search for that information. 100TB proposed narrowing this request to communications by

² As defined in the Complaint.

³ See Exhibits E, F.

volunteers working for Xat between 2010-2015, but Xat refuses to even identify those individuals. *See Exhibits J, K.* This information is relevant to 100TB’s defense that abusive volunteer behavior—not the Cyberattacks—proximately caused Xat’s userbase loss and reputational decline.

- b) **Documents from 2010-2014 concerning “Zuhnnny” (RFP 15).** Xat has agreed to produce some documents for 2015⁴ but refuses to search for documents from 2010-2014. This time period, however, is key to illuminating Zuhnnny’s motive for the attacks and wider attitudes shaping Xat’s reputation. *See Exhibits J, K.*
- c) **Communications among Xat’s principals discussing cybersecurity attacks against Xat (RFP 18).** Xat has agreed to produce some documents for 2015 but refuses to search for documents from 2010-2014. But this time period is relevant to whether Xat’s lack of hardening in response to known cybersecurity threats proximately caused the decline in its userbase and reputation starting in 2012. *See Exhibits J, K.*

100TB thus respectfully requests the Court (a) compel Xat to produce this information, and (b) order Xat to pay 100TB’s reasonable expenses and attorney’s fees incurred in making this motion. *See FED. R. CIV. P. 37(a)(5)(A).*

⁴ Xat represented it would “endeavor to produce” these documents by January 31, 2019, but did not do so. *See Exhibit L.*

CERTIFICATION

100TB certifies that it has made reasonable efforts to resolve the matters herein without Court intervention. 100TB served its discovery requests on October 18, 2018, and Xat served its responses on November 19, 2018. For the past two and a half months, the parties' respective counsels have conferred extensively to narrow the issues in dispute, including participating in meet and confer teleconferences on December 19, 2018 and January 17, 2019, and exchanging no fewer than five meet-and-confer letters. *See Exhibits G-L.*

DATED: February 1, 2019

BAKER & HOSTETLER LLP (NY)

By: /s/ David McMillan

*Attorneys for Defendant Hosting Services,
Inc., a/k/a 100TB.com*

CERTIFICATE SERVICE

I hereby certify that on the 1st day of February 2019, I caused a true and correct copy of the foregoing **SHORT FORM MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND THE PRODUCTION OF DOCUMENTS** to be served by CM/ECF on the following:

David L. Mortensen (#8242)
David.Mortensen@stoel.com
Jordan C. Bledsoe (#15545)
Jordan.Bledsoe@stoel.com
STOEL RIVES LLP
201 S Main Street, Suite 1100
Salt Lake City, UT 84111
Telephone: (801) 328-3131
Facsimile: (801) 578-6999

Attorneys for Plaintiff Xat.com Limited

/s/ David McMillan